

December 1, 2010

By Facsimile

Mr. Les Trobman
General Counsel, MC 101
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Re: *TCEQ Docket No. 2009-033-AIR, SOAH Docket No. 582-09-2005; Application of Las Brisas Energy Center, LLC for State Air Quality Permit Nos. 85013, HAP48, PAL41, and PSD-TX-1138*

Dear Mr. Trobman:

On December 1, 2010 Administrative Law Judges (“*ALJs*”) Craig Bennett and Tommy Broyles issued their Proposal for Decision on Remand (“*PFDR*”) in the above-captioned remand matter. To the extent that it applies in a remanded case, 30 Tex. Admin. Code § 80.257(a), would suggest that exceptions to the PFD are due December 21, 2010, and replies to exceptions are due December 31, 2010, unless these deadlines are changed as allowed by § 80.257(b). The last currently scheduled Texas Commission on Environmental Quality (“*TCEQ*” or “*Commission*”) Agenda meeting for 2010 is December 14, 2010. Accordingly, Applicant Las Brisas Energy Center, LLC (“*Applicant*” or “*Las Brisas*”) respectfully requests that, pursuant to your authority under 30 Tex. Admin. Code § 80.257(b),¹ you set the deadlines for filing exceptions and replies to exceptions to allow this matter to be placed on the Commission’s December 14, 2010 Agenda.² Applicant

¹ 30 TEX. ADMIN. CODE § 80.257(b) provides that, “[o]n his own motion or at the request of a party, the general counsel may change the deadlines to file pleadings following the proposal for decision.”

² Applicant notes that 30 Tex. Admin. Code § 80.267(b) (2010) requires that the Commission’s decision “*will be rendered* within 60 days after the date the hearing is finally closed.” (emphasis added). This directive is especially stringent when compared to the earlier version of the rule, which merely stated that the Commission’s final decision would “*customarily*” be rendered within 60 days after the date the hearing finally closed. See 30 TEX. ADMIN. CODE § 269.11 (1994). Additionally, the 60-day decision deadline in 30 Tex. Admin. Code § 80.267(b) is mandated by Tex. Gov’t Code § 2001.143, unless an extension is announced at the conclusion of the hearing. See TEX. GOV’T

proposes the following revised schedule: (1) deadline for exceptions is December 7, 2010 and the deadline for replies to December 9, 2010. Applicant also respectfully suggests that the ALJs may elect to respond in writing to exceptions if time permits, but may also do so orally at the Agenda meeting.³

The post-PFD briefing process in this matter can and should be greatly streamlined. The parties have, over the last several years, extensively briefed the legal issues surrounding the facts and expert opinions that constitute the record evidence in the case. The record in this matter reflects hundreds, if not thousands, of hours of work of the TCEQ staff, the ALJs, Protestants, and Applicant. Moreover, most of the issues remanded to SOAH are not reasonably in dispute.⁴ Accordingly, extensive post-PFD briefing in this matter is unnecessary and the typical twenty and thirty-day deadlines are not warranted.

Moreover, during the October 15, 2010 Agenda, Commissioner Shaw stated that one of the Commissioners' goals is to "meet the January time frame" and issue the permit by the

CODE § 2001.143(a) & (c). The remand hearing in this matter closed on October 21, 2010 without any such extension being announced, and, accordingly, the Commission must render a decision no later than December 20, 2010. Moreover, while 30 Tex. Admin. Code § 80.267(a) requires that the Commission render its decision upon the expiration of 30 days or later following service of the PFD, this does not limit the Commission's ability to hear this matter at its December 14, 2010 Agenda. It is clear from the rule history that the Commission's decision time is tied to the time for exceptions and replies to exceptions. The former version of 30 Tex. Admin. Code § 80.257 allowed **10** days to file exceptions and **20** days to file replies to exceptions. *See* 30 TEX. ADMIN. CODE § 269.6 (1994). Similarly, the former version of 30 Tex. Admin. Code § 80.267 contained a **20**-day decision deadline. *See* 30 TEX. ADMIN. CODE § 269.10 (1994). When the deadlines for exceptions and replies to exceptions were changed to **20** and **30** days, respectively, the decision deadline was also changed to **30** days. *See* 21 Tex. Reg. 4778-4779 (May 28, 1996). Accordingly, if the deadlines for exceptions and replies for exceptions are shortened pursuant to 30 Tex. Admin. Code § 80.257, then the time allotted for the Commission's decision may be similarly reduced and the Commission may decide this matter at the December 14, 2010 Agenda.

³ Whether the ALJs file a response to exceptions or replies is discretionary. *See* 30 Tex. Admin. Code § 80.259 ("The judge *may* file an amended proposal for decision in response to exceptions, replies, or briefs submitted by the parties.") (emphasis added).

⁴ *See Proposal for Decision In Re: Application of Las Brisas Energy Canter, LLC for State Air Quality Permit Nos. 85013, HAP48, PAL41, and PSD-TX-1138*; SOAH Docket No. 582-09-2005; TCEQ Docket No. 2009-0033-AIR at 3-4, 51 (Dec. 1, 2010) (Bennett and Broyles); *see also* Applicant's Remand Response to Closing Arguments.

end of the year, assuming of course that the Commission finds that the permit application meets all applicable statutory and regulatory requirements.⁵ Applicant's requested schedule allows this goal to be achieved while preserving the rights of all parties to file exceptions and replies to exceptions.

As the party requesting the change, Applicant is required under 30 Tex. Admin. Code § 80.257(b) to contact the parties prior to submitting its request. Applicant is also required to indicate whether its request is opposed by any party and whether the judges and the parties agree on the proposed dates. In anticipation of the PFD being issued on Friday, December 3, 2010,⁶ Applicant polled the parties and ALJs about setting the deadline for exceptions on December 7, 2010 and the deadline for replies on December 9, 2010. As of this writing, representatives for Protestants Sierra Club, Environmental Defense Fund, Wilson Wakefield, Roger Landress, and the Clean Economy Coalition opposed any change to the post-PFD briefing schedule, and the Executive Director and the ALJs take no position.⁷ The Medical Groups, Texas Clean Air Cities Coalition, League of United Latin American Citizens, individual protestant Manuel Cavazos, and counsel for the Office of Public Interest Counsel have not responded to Applicant's request at the time of this filing. Applicant notes that, because the PFD for State Air Quality Permit Nos. 85013, HAP48, PAL41, and PSD-TX-1138 recommends denial of Las Brisas's application, of all of the parties, Applicant is most disadvantaged by having less time to prepare exceptions to this PFD. Additionally, Applicant will have a far greater number of exceptions to reply to than the Protestants. In other words, Applicant's request to revise the post-PFD briefing schedule does not create any briefing advantage for Las Brisas.

Finally, the Applicant respectfully requests that this matter be set on the December 14, 2010 Agenda in accordance with applicable notice requirements and in anticipation that this request will be granted and that all necessary filings will be received by that date.

⁵ See Transcript of Commissioner's October 15, 2010 Agenda, Agenda Item No. 2 at 7:12 to 8:2 (Chairman Shaw). Attached as Exhibit A.

⁶ See Order No. 21 (indicating that the PFD would be issued between December 1 and December 3, 2010) and now that the PFD has issued on December 1st rather than December 3rd, Applicant acknowledges that it may be appropriate to set the deadline for exceptions on December 6th rather than December 7th to allow an additional day for preparing exceptions.

⁷ See Letter from ALJs to TCEQ General Counsel at 2 (Dec. 1, 2010).

Thank you for your consideration. If you need additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'John A. Riley', written over a horizontal line.

John A. Riley

State Bar No. 16927900

Christopher C. Thiele

State Bar No. 24013622

Nikki Adame Winningham

State Bar No. 24045370

Jenifer L. Sutter

State Bar No. 24070707

VINSON & ELKINS L.L.P.

2801 Via Fortuna, Suite 100

Austin, Texas 78746

Telephone: (512) 542-8520

Facsimile: (512) 236-3329

COUNSEL FOR LAS BRISAS ENERGY
CENTER, LLC

cc: Administrative Law Judges Broyles and Bennett
Service List

CERTIFICATE OF SERVICE

I hereby certify that, on this the 1st day of December 2010, a true and correct copy of the foregoing document has been served via hand delivery, facsimile, electronic mail, overnight mail, U.S. Mail, and/or Certified Mail, Return Receipt Requested, on the parties on the following service list.

FOR SOAH:

The Honorable Tommy Broyles
Administrative Law Judge
The Honorable Craig R. Bennett
Administrative Law Judge
State Office Of Administrative Hearings
300 West 15th Street
Austin, Texas 78701
Tel. (512) 475-4993
Fax: (512) 475-4994
tommy.broyles@soah.state.tx.us
craig.bennett@soah.state.tx.us

State Office of Administrative Hearings
Attn: SOAH Docket Clerk
P.O. Box 13025
Austin, TX 78711-3025
Tel: (512) 475-4993
Fax: (512) 475-4994

FOR THE CHIEF CLERK:

Ms. LaDonna Castañuela, Chief Clerk
TCEQ Office of Chief Clerk MC-105
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-3300
Fax: (512) 239-3311

FOR CLEAN ECONOMY COALITION

Gerald Sansing, Chairperson
Clean Economy Coalition
5426 Chevy Chase Dr.
PO Box 537
Corpus Christi, TX 78412
Tel: (361) 855-7051
Fax: (361) 854-5859
gsansing@gmail.com

FOR THE EXECUTIVE DIRECTOR:

Erin Selvera
Ben Rhem
TCEQ Environmental Law Division MC-173
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-0633 (Selvera)
Tel: (512) 239-6501 (Rhem)
Fax: (512) 239-0606
brhem@tceq.state.tx.us
eselvera@tceq.state.tx.us

**FOR THE PUBLIC INTEREST
COUNSEL**

Mr. Scott A. Humphrey
TCEQ Office of the Public Interest Counsel
MC-103
PO Box 13087
Austin, TX 78711-3087
Tel: (512) 239-0574
Fax: (512) 239-6377
shumphre@tceq.state.tx.us

FOR SIERRA CLUB

Ilan Levin
Gabriel Clark-Leach
Environmental Integrity Project – Texas
Office
1303 San Antonio, Ste 200
Austin, TX 78701
Direct: (512) 637-9479
Fax: (512) 584-8019
ilevin@environmentalintegrity.org
gclark-leach@environmentalintegrity.org

FOR MEDICAL GROUPS

Richard Lowerre, Counsel
David Frederick, Counsel
Lowerre, Frederick, Perales, Allmon &
Rockwell
707 Rio Grande, Suite 200
Austin, TX 78701
Tel: (512) 469-6000
Fax: (512) 482-9346
rl@LF-LawFirm.com
dof@LF-LawFirm.com
and

Jeffery Wigington
Wigington Rumley, LLP
800 N. Shoreline, Suite 1400 S.
Corpus Christi, TX 78401
Fax: (361) 855-0487
jwigington@wigrum.com

**FOR LEAGUE OF UNITED LATIN
AMERICAN CITIZENS (LULAC)**

Susie Luna-Saldana, Education Chair
League of United Latin American Citizens,
Council No. 1
4710 Hakel Dr
Corpus Christi, TX 78415
Tel: (361) 779-0939

**FOR ENVIRONMENTAL DEFENSE
FUND**

Tom Weber
Matt Baab
Clark Jobe
McElroy Sullivan & Miller LLP
PO Box 12127
Austin, TX 78711
Tel: (512) 327-8111
Fax: (512) 327-6566
tweber@msmtx.com
mbaab@msmtx.com
cjobe@msmtx.com

FOR ROGER LANDRESS

Michael J. Westergren Esq.
PO Box 3371
Corpus Christi, TX 78404
Tel: (361) 765-6828
Fax: (361) 882-3928
mikewest@trip.net

**FOR TEXAS CLEAN AIR CITIES
COALITION**

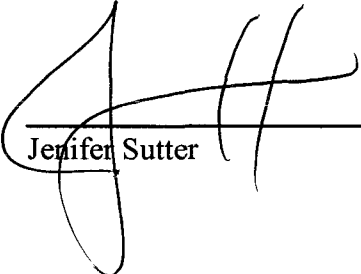
Terrell W. Oxford
Susman Godfrey LLP
901 Main, Ste 5100
Dallas, TX 75202
Tel: (214) 754-1902
Fax: (214) 665-0847
toxford@susmangodfrey.com

FOR INDIVIDUALS:

Manuel Cavazos, III
3409 Fairmont Drive
Corpus Christi, TX 78408
Tel: (361) 779-4266

and

Mr. Pat Morris
1002 Cairo Drive
Corpus Christi, TX 78412
Tel: (361) 991-0894
patrumo@juno.com



Jennifer Sutter

ATTACHMENT A

TRANSCRIPT OF PROCEEDINGS
BEFORE THE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AUSTIN, TEXAS

TRANSCRIPTION OF VIDEO
OF COMMISSIONERS' MEETING
FRIDAY, OCTOBER 15, 2010
AGENDA ITEM NO. 2

TCEQ COMMISSIONER'S MEETING - ITEM 2 10/15/2010

<p>2</p> <p>1 AGENDA ITEM NO 2 - TCEQ Docket No 2009-0033-AIR, SOAH Docket No 582-09-2005 Discussion of the 2 status of the application of Las Brisas Energy Center, LLC for Air Quality Permit No 85013, 3 Prevention of Significant Deterioration Air Quality Permit No PSD-TX 1138, Plant-wide 4 Applicability Limit Permit No PAL41, and Hazardous Air Pollutant Permit No HAP48</p> <p>5</p> <p>6 CHAIRMAN SHAW That brings us to Item 7 No 2, which is discussion of the procedural status in 8 the Las Brisas air permit applications By letter dated 9 October 4th, the Commission has indicated it will not be 10 taking oral argument from the parties but may have 11 questions We have Judges Bennett and Broyles here for 12 the Commission to entertain</p> <p>13 Commissioner Rubinstein 14 COMM RUBINSTEIN Chairman Shaw, 15 consistent with the -- when we first took up this item, 16 I must recuse myself When I was deputy executive 17 director, I was informed with certain aspects of the 18 permit, which was normal under that process, but that 19 constitutes a conflict and, therefore, I cannot 20 participate in the discussion</p> <p>21 CHAIRMAN SHAW Understood Thank you for 22 that</p> <p>23 Obviously, I had some interest 24 Commissioner Garcia, as soon as you did, in trying to 25 figure out where we are with regard to the time line and</p>	<p>4</p> <p>1 And then just a few days before the 2 hearing was scheduled to start, we were informed about 3 serious injuries to one of the expert witnesses for 4 protestants We held a -- we quickly held a prehearing 5 conference with all the parties and determined, after 6 hearing from the parties and the representations of 7 counsel about the injuries to the expert witness, who 8 actually was driving home from his deposition -- he had 9 had his deposition taken by the applicant and was 10 involved in a serious car accident -- we determined to 11 continue the hearing, what we thought a sufficient 12 amount of time, approximately five or six weeks, to 13 allow for the expert to either heal or for the 14 protestants to retain another expert</p> <p>15 There have been a number of filings 16 regarding our decision to continue it We are currently 17 scheduled to go to hearing starting next Monday</p> <p>18 So at this point, I don't think we can 19 move up the hearing any more quickly, but we are 20 scheduled to start next Monday</p> <p>21 We've reserved four days We really don't 22 know exactly how long the hearing is going to last 23 because only the applicant has prefiled testimony The 24 other parties, the executive director and the 25 protestants, will be presenting their witnesses live at</p>
<p>3</p> <p>1 the prospects and what we can do to try to ensure that 2 we can have this matter dealt with in a timely manner 3 And so I'm hoping that we can have the judges at this 4 time give us an update on where we are and what 5 opportunities you seek to be able to expedite this 6 process, so good morning and thank you for coming and 7 helping us out in this situation</p> <p>8 JUDGE BENNETT Good morning 9 Mr Chairman, Commissioners, general counsel, my name is 10 Craig Bennett With me is Tommy Broyles We are the 11 administrative law judges who are assigned to preside 12 over this matter</p> <p>13 We have tried to provide some information 14 to the Commission by a couple of letters prior to today 15 The first one, dated October 6th, set out the way that 16 we intended to handle the case as expeditiously as 17 possible</p> <p>18 As you I'm sure are aware from reading 19 the filings in this case, we continued the original 20 setting -- well, when we go back to the original open 21 meeting agenda where this matter was addressed we tried 22 to be very prompt - in fact, I think we issued an order 23 the very next morning setting a schedule that would 24 allow it to be returned to the Commission in the 25 deadline that you gave us</p>	<p>5</p> <p>1 the hearing So we have reserved four days It's quite 2 possible it may go less than that It's difficult for 3 us to know at this point in time</p> <p>4 And then we anticipate giving the parties 5 approximately a week to prepare their initial briefs and 6 then another week for reply briefs, and then that will 7 leave us with approximately four weeks, including the 8 Thanks -- even working over Thanksgiving to get a PFD 9 back to you by December 10th We will be working as 10 furiously as possible, and if we can get it out sooner 11 than that, we will</p> <p>12 There are six issues that the Commission 13 remanded Given the nature of the case, I mean, it's 14 certainly possible that there may be much ado about 15 nothing, that when we have the hearing, we find that 16 out</p> <p>17 At this point in time, though, it's 18 difficult to anticipate that just because this has been 19 a heavily contested matter up to this point And so we 20 would expect that it is going to continue to remain 21 heavily contested on the remand issues</p> <p>22 And so given that, we laid out in a letter 23 for you our intention to have the matter resolved -- or 24 at least a PFD issued by December 10th and we've also, 25 in our most recent letter, indicated that we would be</p>

TCEQ COMMISSIONER'S MEETING - ITEM 2 10/15/2010

<p>6</p> <p>1 available at any point after that -- I mean I think we 2 indicated near the last week of December but we would 3 make ourselves available at any point after that if the 4 Commission decided to shorten the time frame for 5 exceptions and hold an agenda sometime in December So 6 that's pretty much where we are, and we're available if 7 you have any questions</p> <p>8 CHAIRMAN SHAW Okay Well, thank you I 9 first want to express appreciation We certainly did -- 10 when we -- when we considered this item and we put a 11 very -- we asked you to put a very expedited time frame 12 on the matter, and you were very responsive and very 13 prompt to develop a schedule to accomplish that, and so 14 I appreciate that -- the commitment And I think I 15 recall you saying -- when we asked, you said, "How 16 quickly do you need it and we'll do it?" And so I 17 appreciate your enthusiasm and willingness to work with 18 us on that</p> <p>19 Do you have an update on Dr Gasparini's 20 condition? Is he -</p> <p>21 JUDGE BROYLES Well --</p> <p>22 JUDGE BENNETT It's -- oh, go ahead</p> <p>23 JUDGE BROYLES It's not really dependent 24 upon his condition We're going to hearing next week 25 And so we informed the protesting -- protestant parties</p>	<p>8</p> <p>1 indeed this permit were to meet the requirements that we 2 could try to beat the January time frame for that</p> <p>3 And so I know that the applicant had 4 proposed sort of a consolidation and a shortening of 5 certain parts that both parties would have And so 6 recognizing -- one, I appreciate your willingness to 7 stick to four weeks, including the Thanksgiving holiday, 8 but their proposal, as I understood it, would -- one, it 9 would -- it would basically have the time frame for your 10 development of your PFD to come in right prior to 11 Thanksgiving, the 23rd of November, and the shortening 12 would not happen in your time frame but instead in what 13 each party had</p> <p>14 And so my view was that that seemed to not 15 have a disproportionate impact on either of the parties 16 Can you address that and see if you have comfort or 17 concerns for that that would help to inform --</p> <p>18 JUDGE BENNETT I guess I would disagree 19 with one thing, perhaps, in terms of the 20 characterization, and that -- and that is, ultimately, 21 what the applicant has proposed is to do away with 22 written briefing and have oral arguments That would 23 actually make our job much more difficult</p> <p>24 And so, you know, it would be -- we say 25 four weeks with written briefing If we don't have</p>
<p>7</p> <p>1 that they needed to either go get another expert and be 2 prepared to go to trial starting on Monday, or if he 3 were to heal and be prepared, then, of course, he could 4 be presented</p> <p>5 So we haven't involved ourselves with 6 what's -- their preparation We've just given them the 7 deadlines</p> <p>8 CHAIRMAN SHAW Got you Well, let's hope 9 that he's healing well And regardless of whether or 10 not he can provide the testimony, I wish him well in his 11 recovery on that</p> <p>12 With regard to the opportunity moving 13 forward obviously, as you mentioned, you presented in 14 your letter some deadlines and that still, as I look at 15 it, puts us into a situation that pushes beyond January, 16 even and I appreciate the offer to be able to to 17 be willing to make yourselves available the last week of 18 December However, there are some concerns that 19 happen - what all -- also needs to happen after our 20 agenda in order to finalize and ensure that emission 21 limits -- should we determine to move forward with 22 approving a permit, to make sure that those are accurate 23 and captured And so it would be problematic to be able 24 to get that accomplished prior to January 1 And that 25 was certainly one of our goals is to make sure that if</p>	<p>9</p> <p>1 written briefing, then four weeks becomes exceptionally 2 difficult because then what happens is, in oral 3 arguments, they may argue, "Well, this and that and 4 this," and then we've got to go back -- because our 5 job -- we're really the keepers of the record We don't 6 just take what a party says We have to make sure the 7 record actually supports whatever the parties argue</p> <p>8 And when we have written briefs, they'll 9 have cites, and we can quickly go to the cite and look 10 on page, you know, whatever of the transcript and say, 11 "Yeah, it does say this," or, "No, they say it says 12 this, but in reality, that's not really what that 13 witness was saying And I recall that testimony and 14 that wasn't the gist of it "</p> <p>15 When you have oral arguments, we don't 16 have that And then, therefore we have to go back and 17 parse through all of the record to try and figure out, 18 "Does it really support what they said in oral 19 arguments? Is it - what really does the evidence 20 show?"</p> <p>21 And so I would say it would be 22 exceptionally difficult I can tell you this much -- 23 and I think we indicate in the letter - it would be 24 unprecedented in a case of this nature to have oral 25 arguments and it would be exceptionally difficult for</p>

TCEQ COMMISSIONER'S MEETING - ITEM 2 10/15/2010

<p>10</p> <p>1 us to, I think, complete the PFD in four weeks if we had</p> <p>2 no written briefing, so</p> <p>3 CHAIRMAN SHAW Commissioner Garcia, do</p> <p>4 you have any other questions or things that might help</p> <p>5 to identify a potential path forward?</p> <p>6 COMM GARCIA It -- I appreciate y'all</p> <p>7 coming down here today I don't have much to add to</p> <p>8 this</p> <p>9 I infer the difficulty with what Chairman</p> <p>10 Shaw is looking at as trying to accomplish before</p> <p>11 January 1st I infer that due to due process or what</p> <p>12 have you</p> <p>13 I have every confidence that you recognize</p> <p>14 and will have the revised PFD back here as soon as you</p> <p>15 can I just -- I appreciate -- this was not a -- you</p> <p>16 know I wanted to get rid of it back in June I was</p> <p>17 ready to get rid of it then, you know, sooner than</p> <p>18 later but it was not ready It was not -- and you --</p> <p>19 and we sent it for a variety of reasons You're -- you</p> <p>20 know what's before you So I appreciate you taking the</p> <p>21 time and giving us an update</p> <p>22 CHAIRMAN SHAW Well, great Well, you</p> <p>23 know, I was hopeful that we would be able to identify</p> <p>24 that there was something that hadn't been considered,</p> <p>25 and not to suggest that you hadn't thought it through</p>	<p>12</p> <p>1 as possible</p> <p>2 CHAIRMAN SHAW I appreciate that And I</p> <p>3 don't at all intend to question that I appreciate your</p> <p>4 willingness</p> <p>5 And, again, I remember, when we asked you,</p> <p>6 you were very responsive, and so I appreciate that And</p> <p>7 I just, again, encourage you to find -- turn over every</p> <p>8 rock but do the best you can, and we'll look forward to</p> <p>9 hearing back from you with a very quickly done but</p> <p>10 thorough and -- and accurate, as you always do -- you</p> <p>11 both do good excellent work, so I appreciate your --</p> <p>12 JUDGE BENNETT Thank you</p> <p>13 CHAIRMAN SHAW -- efforts on that And</p> <p>14 thank you for coming down and sharing, giving us an</p> <p>15 update today.</p> <p>16 Any other comments? If not, thank you for</p> <p>17 your time And best wishes on moving this forward</p> <p>18 JUDGE BENNETT Thank you</p> <p>19 JUDGE BROYLES Thank you</p> <p>20 (Item No 2 concluded)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>11</p> <p>1 fully, but recognizing the challenges there and the fact</p> <p>2 that the -- you know, we can't schedule the hearing</p> <p>3 sooner than it's already scheduled at this point, so</p> <p>4 there is -- there is really no opportunity to gain back</p> <p>5 any of the time -- ways to expedite the process</p> <p>6 And we'll certainly -- or I will certainly</p> <p>7 commit that I'm going to be interested in working with</p> <p>8 my staff to try to work certainly within the</p> <p>9 requirements of our own rules and legal requirements to</p> <p>10 expedite it on our end, but anything that we can do to</p> <p>11 facilitate making a timely decision on this matter,</p> <p>12 we're committed to</p> <p>13 And so if there's something that you could</p> <p>14 find that speeds us along, I encourage you to take</p> <p>15 advantage of it, so</p> <p>16 JUDGE BROYLES We certainly will</p> <p>17 JUDGE BENNETT Yeah, we certainly will</p> <p>18 And we indicate I think in the letter - but if we</p> <p>19 didn't we'll state it here -- we have cleared our</p> <p>20 calendars We are you know getting rid of everything</p> <p>21 else that was previously on our docket, reassigning</p> <p>22 hearings and to other judges and doing what we can</p> <p>23 so that way our calendar is free to work solely on this</p> <p>24 matter until we can get the PFD out once the hearing is</p> <p>25 concluded And so we will be working as expeditiously</p>	<p>13</p> <p>1 C E R T I F I C A T E</p> <p>2 STATE OF TEXAS)</p> <p>3 COUNTY OF TRAVIS)</p> <p>4 I, Lorrie A Schnoor, Certified Shorthand</p> <p>5 Reporter in and for the State of Texas, Registered Merit</p> <p>6 Reporter and Texas Certified Realtime Reporter, do</p> <p>7 hereby certify that the foregoing is a correct</p> <p>8 transcription from the video recording of the</p> <p>9 proceedings in the above-entitled matter</p> <p>10 I further certify that I am neither counsel</p> <p>11 for, related to, nor employed by any of the parties to</p> <p>12 the action in which this hearing was taken, and further</p> <p>13 that I am not financially or otherwise interested in the</p> <p>14 outcome of the action</p> <p>15 IN WITNESS WHEREOF, I have hereunto set my</p> <p>16 hand and seal this 23rd day of November 2010</p> <p>17</p> <p>18</p> <p>19 LORRIE A SCHNOOR, RMR, TCRR</p> <p>20 Certified Shorthand Reporter</p> <p>21 CSR No 4642 - Expires 12/31/11</p> <p>22</p> <p>23 Firm Registration No 276</p> <p>24 Kennedy Reporting Service, Inc</p> <p>25 8140 N Mo-Pac Expressway</p> <p>Suite II-120</p> <p>Austin, Texas 78759</p> <p>512 474 2233</p>

TCEQ COMMISSIONER'S MEETING - ITEM 2 10/15/2010

A	applications	2:11, 3:8	Chairman	conference
	2:8	3:10, 6:22	2:6, 2:14	4:5
able 3:5	appreciate	8:18	2:21, 3:9	confidence
7:16, 7:23	6:14, 6:17	11:17	6:8, 7:8	10:13
10:23	7:16, 8:6	12:12	10:3, 10:9	conflict
above-ent...	10:6	12:18	10:22	2:19
13:9	10:15	best 12:8	12:2	considered
accident	10:20	12:17	12:13	6:10
4:10	12:2, 12:3	beyond	challenges	10:24
accomplish	12:6	7:15	11:1	consistent
6:13	12:11	briefing	character...	2:15
10:10	appreciation	8:22, 8:25	8:20	consolida...
accomplished	6:9	9:1, 10:2	cite 9:9	8:4
7:24	approving	briefs 5:5	cites 9:9	constitutes
accurate	7:22	5:6, 9:8	cleared	2:19
7:22	approxima...	brings 2:6	11:19	contested
12:10	4:12, 5:5	Brisas 2:2	come 8:10	5:19, 5:21
action	5:7	2:8	comfort	continue
13:12	argue 9:3	Broyles	8:16	4:11, 4:16
13:14	9:7	2:11, 3:10	coming 3:6	5:20
add 10:7	argument	6:21, 6:23	10:7	continued
address	2:10	11:16	12:14	3:19
8:16	arguments	12:19	COMM 2:14	correct
addressed	8:22, 9:3		10:6	13:7
3:21	9:15, 9:19	C	comments	counsel
administr...	9:25	calendar	12:16	3:9, 4:7
3:11	asked 6:11	11:23	Commission	13:10
ado 5:14	6:15, 12:5	calendars	1:3, 2:9	COUNTY
advantage	aspects	11:20	2:12, 3:14	13:3
11:15	2:17	captured	3:24, 5:12	couple
agenda	assigned	7:23	6:4	3:14
1:12, 2:1	3:11	car 4:10	Commissioner	course 7:3
3:21, 6:5	Austin 1:4	case 3:16	2:13, 2:24	Craig 3:10
7:20	13:22	3:19, 5:13	10:3	CSR 13:19
ahead 6:22	available	9:24	Commissio...	currently
air 2:2	6:1, 6:3	Center 2:2	1:10, 3:9	4:16
2:3, 2:4	6:6, 7:17	certain	commit	
2:8	aware 3:18	2:17, 8:5	11:7	D
allow 3:24		certainly	commitment	dated 2:8
4:13	B	5:14, 6:9	6:14	3:15
amount	back 3:20	7:25, 11:6	committed	day 13:16
4:12	5:9, 9:4	11:6, 11:8	11:12	days 4:1
anticipate	9:16	11:16	complete	4:21, 5:1
5:4, 5:18	10:14	11:17	10:1	deadline
Applicabi...	10:16	Certified	concerns	3:25
2:4	11:4, 12:9	13:4, 13:6	7:18, 8:17	deadlines
applicant	basically	13:19	concluded	7:7, 7:14
4:9, 4:23	8:9	certify	11:25	dealt 3:2
8:3, 8:21	beat 8:2	13:7	12:20	December
application	Bennett	13:10	condition	5:9, 5:24
2:2			6:20, 6:24	

TCEQ COMMISSIONER'S MEETING - ITEM 2 10/15/2010

6:2, 6:5 7:18 decided 6:4 decision 4:16 11:11 dependent 6:23 deposition 4:8, 4:9 deputy 2:16 Deteriora... 2:3 determine 7:21 determined 4:5, 4:10 develop 6:13 development 8:10 difficult 5:2, 5:18 8:23, 9:2 9:22, 9:25 difficulty 10:9 director 2:17, 4:24 disagree 8:18 discussion 2:1, 2:7 2:20 dispropor... 8:15 docket 2:1 2:1, 11:21 doing 11:22 Dr 6:19 driving 4:8 due 10:11 10:11	12:13 either 4:13, 7:1 8:15 emission 7:20 employed 13:11 encourage 11:14 12:7 Energy 2:2 ensure 3:1 7:20 entertain 2:12 enthusiasm 6:17 ENVIRONME... 1:3 evidence 9:19 exactly 4:22 excellent 12:11 exception... 9:1, 9:22 9:25 exceptions 6:5 executive 2:16, 4:24 expect 5:20 expedite 3:5, 11:5 11:10 expedited 6:11 expeditio... 3:16 11:25 expert 4:3 4:7, 4:13 4:14, 7:1 Expires 13:19 express 6:9 Expressway	13:21 --- F --- facilitate 11:11 fact 3:22 11:1 figure 2:25, 9:17 filings 3:19, 4:15 finalize 7:20 financially 13:13 find 5:15 11:14 12:7 Firm 13:20 first 2:15 3:15, 6:9 five 4:12 foregoing 13:7 forward 7:13, 7:21 10:5, 12:8 12:17 four 4:21 5:1, 5:7 8:7, 8:25 9:1, 10:1 frame 6:4 6:11, 8:2 8:9, 8:12 free 11:23 FRIDAY 1:11 fully 11:1 furiously 5:10 further 13:10 13:12 --- G --- gain 11:4 Garcia 2:24, 10:3	10:6 Gasparini's 6:19 general 3:9 getting 11:20 gist 9:14 give 3:4 given 5:13 5:22, 7:6 giving 5:4 10:21 12:14 go 3:20 4:17, 5:2 6:22, 7:1 7:2, 9:4 9:9, 9:16 goals 7:25 going 4:22 5:20, 6:24 11:7 good 3:6 3:8, 12:11 great 10:22 guess 8:18 --- H --- hand 13:16 handle 3:16 HAP48 2:4 happen 7:19, 7:19 8:12 happens 9:2 Hazardous 2:4 heal 4:13 7:3 healing 7:9 hearing 4:2, 4:6 4:11, 4:17 4:19, 4:22 5:1, 5:15	6:24, 11:2 11:24 12:9 13:12 hearings 11:22 heavily 5:19, 5:21 held 4:4 4:4 help 8:17 10:4 helping 3:7 hereunto 13:15 hold 6:5 holiday 8:7 home 4:8 hope 7:8 hopeful 10:23 hoping 3:3 --- I --- identify 10:5 10:23 II-120 13:22 impact 8:15 including 5:7, 8:7 indicate 9:23 11:18 indicated 2:9, 5:25 6:2 infer 10:9 10:11 inform 8:17 information 3:13 informed 2:17, 4:2 6:25
--	--	---	--	---

TCEQ COMMISSIONER'S MEETING - ITEM 2 10/15/2010

initial 5:5	Kennedy 13:21	11:24 13:9	oh 6:22	6:3, 11:3
injuries 4:3, 4:7	know 4:22 5:3, 8:3	mean 5:13 6:1	Okay 6:8	Pollutant 2:4
intend 12:3	8:24, 9:10 10:16	meet 8:1	once 11:24	possible 3:17, 5:2
intended 3:16	10:17 10:20	meeting 1:10, 3:21	open 3:20	5:10, 5:14
intention 5:23	10:23 11:2	mentioned 7:13	opportuni... 3:5	12:1
interest 2:23	11:20	Merit 13:5	opportunity 7:12, 11:4	potential 10:5
interested 11:7	L	Monday 4:17, 4:20	oral 2:10	prefiled 4:23
13:13	laid 5:22	7:2	8:22, 9:2	prehearing 4:4
involved 4:10, 7:5	Las 2:2 2:8	Mo-Pac 13:21	9:15, 9:18	preparation 7:6
issued 3:22, 5:24	law 3:11	morning 3:6, 3:8	9:24	prepare 5:5
issues 5:12, 5:21	leave 5:7	3:23	order 3:22 7:20	prepared 7:2, 7:3
item 1:12	legal 11:9	move 4:19	original 3:19, 3:20	presented 7:4, 7:13
2:1, 2:6	letter 2:8 5:22, 5:25	7:21	outcome 13:14	presenting 4:25
2:15, 6:10	7:14, 9:23	7:12	P	preside 3:11
12:20	11:18	12:17	page 9:10	pretty 6:6
J	letters 3:14	N	PAL41 2:4	Prevention 2:3
January 7:15, 7:24	Limit 2:4	name 3:9	parse 9:17	previously 11:21
8:2, 10:11	limits 7:21	nature 5:13, 9:24	participate 2:20	prior 3:14
job 8:23	line 2:25	near 6:2	parties 2:10, 4:5	7:24, 8:10
9:5	live 4:25	need 6:16	4:6, 4:24	problematic 7:23
JUDGE 3:8	LLC 2:2	needed 7:1	5:4, 6:25	procedural 2:7
6:21, 6:22	long 4:22	needs 7:19	8:5, 8:15	proceedings 1:1, 13:9
6:23, 8:18	look 7:14	neither 13:10	9:7, 13:11	process 2:18, 3:6
11:16	9:9, 12:8	normal 2:18	parts 8:5	10:11
11:17	looking 10:10	November 8:11	party 8:13	11:5
12:12	Lorrie 13:4	13:16	9:6	prompt 3:22, 6:13
12:18	13:18	number 4:15	path 10:5	proposal 8:8
12:19	M	O	permit 2:2	proposed 8:4, 8:21
judges 2:11, 3:3	making 11:11	obviously 2:23, 7:13	2:3, 2:4	prospects 3:1
3:11	manner 3:2	October 1:11, 2:9	2:4, 2:8	protestant
June 10:16	matter 3:2 3:12, 3:21	3:15	2:18, 7:22	
K	5:19, 5:23	offer 7:16	8:1	
keepers 9:5	6:12 11:11		PFD 5:8 5:24, 8:10	
			10:1	
			10:14	
			11:24	
			Plant-wide 2:3	
			point 4:18	
			5:3, 5:17	
			5:19, 6:1	

TCEQ COMMISSIONER'S MEETING - ITEM 2 10/15/2010

6:25 protestants 4:4, 4:14 4:25 protesting 6:25 provide 3:13, 7:10 PSD-TX-1138 2:3 pushes 7:15 put 6:10 6:11 puts 7:15	11:21 recall 6:15, 9:13 recognize 10:13 recognizing 8:6, 11:1 record 9:5 9:7, 9:17 recording 13:8 recovery 7:11 recuse 2:16 regard 2:25, 7:12 regarding 4:16 regardless 7:9 Registered 13:5 Registration 13:20 related 13:11 remain 5:20 remand 5:21 remanded 5:13 remember 12:5 reply 5:6 Reporter 13:5, 13:6 13:6 13:19 Reporting 13:21 represent... 4:6 requirements 8:1, 11:9 11:9 reserved 4:21, 5:1 resolved 5:23	responsive 6:12, 12:6 retain 4:14 returned 3:24 revised 10:14 rid 10:16 10:17 11:20 right 8:10 RMR 13:18 rock 12:8 Rubinstein 2:13, 2:14 rules 11:9	10:10 10:22 12:2 12:13 shorten 6:4 shortening 8:4, 8:11 Shorthand 13:4 13:19 show 9:20 Significant 2:3 situation 3:7, 7:15 six 4:12 5:12 SOAH 2:1 solely 11:23 soon 2:24 10:14 sooner 5:10 10:17 11:3 sort 8:4 speeds 11:14 staff 11:8 start 4:2 4:20 starting 4:17, 7:2 state 11:19 13:2, 13:5 status 2:2 2:7 stick 8:7 sufficient 4:11 suggest 10:25 Suite 13:22 support 9:18 supports 9:7	sure 3:18 7:22, 7:25 9:6 T take 9:6 11:14 taken 4:9 13:12 TCEQ 2:1 TCRR 13:18 tell 9:22 terms 8:19 testimony 4:23, 7:10 9:13 Texas 1:3 1:4, 13:2 13:5, 13:6 13:22 thank 2:21 3:6, 6:8 12:12 12:14 12:16 12:18 12:19 Thanks 5:8 Thanksgiving 5:8, 8:7 8:11 thing 8:19 things 10:4 think 3:22 4:18, 6:1 6:14, 9:23 10:1 11:18 thorough 12:10 thought 4:11 10:25 time 2:25 3:4, 4:12 5:3, 5:17 6:4, 6:11 8:2, 8:9 8:12
Q		S		
Quality 1:3, 2:2 2:3 question 12:3 questions 2:11, 6:7 10:4 quickly 4:4, 4:19 6:16, 9:9 12:9 quite 5:1		saying 6:15, 9:13 says 9:6 9:11 schedule 3:23, 6:13 11:2 scheduled 4:2, 4:17 4:20, 11:3 Schnoor 13:4 13:18 seal 13:16 see 8:16 seek 3:5 sent 10:19 serious 4:3, 4:10 Service 13:21 set 3:15 13:15 setting 3:20, 3:23 sharing 12:14 Shaw 2:6 2:14, 2:21 6:8, 7:8 10:3		
R				
reading 3:18 ready 10:17 10:18 reality 9:12 really 4:21, 6:23 9:5, 9:12 9:18, 9:19 11:4 Realtime 13:6 reasons 10:19 reassigning				

TCEQ COMMISSIONER'S MEETING - ITEM 2 10/15/2010

10:21	10:16	5:24		
11:5	way 3:15	12/31/11		
12:17	11:23	13:19		
timely 3:2	ways 11:5	15 1:11		
11:11	week 5:5	1st 10:11		
today 3:14	5:6, 6:2			
10:7	6:24, 7:17	2		
12:15	weeks 4:12			
Tommy 3:10	5:7, 8:7	2009-0033...		
transcript	8:25, 9:1	2:1		
1:1, 9:10	10:1	2010 1:11		
transcrip...	we've 4:21	13:16		
1:9, 13:8	5:24, 7:6	23rd 8:11		
TRAVIS	9:4	13:16		
13:3	WHEREOF	276 13:20		
trial 7:2	13:15			
tried 3:13	willing	4		
3:21	7:17			
try 3:1	willingness	4642 13:19		
8:2, 9:17	6:17, 8:6	4th 2:9		
11:8	12:4			
trying	wish 7:10	5		
2:24	wishes			
10:10	12:17	512.474.2233		
turn 12:7	witness	13:23		
	4:7, 9:13	582-09-2005		
U	13:15	2:1		
	witnesses			
ultimately	4:3, 4:25	6		
8:20	work 6:17			
understood	11:8	6th 3:15		
2:21, 8:8	11:23			
unprecede...	12:11	7		
9:24	working			
update 3:4	5:8, 5:9	78759		
6:19	11:7	13:22		
10:21	11:25			
12:15	written	8		
	8:22, 8:25			
V	9:1, 9:8	8140 13:21		
	10:2	85013 2:2		
variety				
10:19	Y			
video 1:9				
13:8	y'all 10:6			
view 8:14	Yeah 9:11			
	11:17			
W				
	1			
want 6:9				
wanted	10th 5:9			